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County's legal bills mount

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By [Ed Palattella](#)

ed.palattella@timesnews.com

Schenker administration pays \$56,000 to law firm in ouster of OCY aide
Erie County government has spent \$56,000 to defend the ouster of a child-welfare aide, and the amount is likely to grow as the dispute goes on.

The administration of County Executive Rick Schenker paid the money to an Erie law firm in the case of Abby Conley, who resigned from her \$27,437-a-year job with the county Office of Children and Youth on Sept. 10.

Conley claimed she was wrongfully forced out after she tried to expose wrongdoing at OCY, and in late September she asked the state Civil Service Commission to reinstate her. Conley withdrew the appeal the day before the commission was to hear it in late November.

The law firm the county hired, MacDonald, Illig, Jones & Britton, spent seven weeks preparing for the appeal and received \$56,371 for its work, according to county billing records.

Despite the withdrawal of the Civil Service action, the labor union for OCY, Local 2666 of the American Federation of State, County and Municipal Employees, is pursuing a grievance over Conley's ouster. MacDonald, Illig is expected to handle that case as well, said John Onorato, the solicitor for the Schenker administration.

The county has a staff of in-house lawyers on retainer. The Schenker administration hired MacDonald, Illig to handle Conley's case because of the firm's expertise in labor law and because of the unique circumstances of the Conley case, Onorato said.

EXHIBIT

Onorato said he and some of the county's other in-house lawyers, including those at OCY, were involved in the personnel action against Conley and were set to be witnesses in a case over Conley's ouster. Defending the county in a case while being called as a witness would be "difficult and almost impossible," Onorato said. He said he was subpoenaed to testify at the hearing.

The county's liability insurance for legal claims provides no coverage unless Conley were to sue in court, Onorato said. But he said he believes the state government will reimburse the county for part of the bill.

The \$56,371 bill has become a concern of County Councilman Fiore Leone, a frequent critic of the Schenker administration and OCY.

"If it is their practice to go outside when something like this happens, then why do we have a solicitor's staff?" Leone said.

Onorato's retainer is \$31,000 a year, and the county's four assistant solicitors each have annual retainers of \$25,000, according to county records. OCY has a full-time solicitor paid a salary of \$71,620 a year as well as three other lawyers on retainers ranging from \$82 to \$71.75 an hour, according to OCY records. Those lawyers typically deal with child-welfare issues for OCY, which handles cases of abused and neglected children.

The lawyers at MacDonald, Illig charged the county at a rate of \$175 to \$165 an hour in the Conley case, according to the bill. The case's lead lawyer, Roger Taft, worked 163 hours at an hourly rate of \$175 for an individual bill of \$28,525. The rest of the overall bill covered the work of the other lawyers and expenses.

The accuracy of the bill is not in dispute. Onorato said he is satisfied with the work of MacDonald, Illig, which the Schenker administration three years ago hired to negotiate the county's labor contracts. Taft has been the lead lawyer on those cases.

Taft said he aggressively pursued the Conley case because, at the time, Conley was threatening to take action against the county before the Civil Service Commission and through a union grievance.

"We were ready to go," he said of the Civil Service case. "We were ready to win the case and I am convinced we would have won if it had gone forward."

Conley withdrew her claim because the proceeding was "not in her best interest," according to a letter on file with the Civil Service Commission. Conley last week said her lawyers have told her not to comment on her case.

The \$56,371 spent on the Conley case is the second large expenditure the Schenker administration has paid over OCY personnel issues in the past year. In August, in an agreement the administration initially tried to keep secret, the county paid a \$100,000 settlement to fired OCY caseworker David A. Dows.

Conley, 43, had worked for the county for 13 years, including the past four years at OCY, when she resigned Sept. 10.

Conley claimed the Schenker administration forced her to resign to get back at her for being a whistleblower. Conley's ouster came about a month and a half after she testified in court against her supervisor at OCY, whom Conley said altered court records. The Schenker administration has disputed that claim.

In her Civil Service appeal, Conley said county officials told her the day of her resignation that she had violated OCY rules by using her office e-mail to disclose the telephone number of an OCY client to the client's former caseworker. Conley said she did nothing wrong.

The Schenker administration disagrees. The county's personnel director, Peter Callan, said in an October memo that Conley disclosed a confidential OCY court order "with the intent of alerting" the pregnant mother who was the subject of it.

Onorato, in an interview last week, said the county has "mounted a vigorous defense" against Conley because of her "egregious breach of confidentiality" regarding the court order. He said the county does not want Conley to return to OCY.

"In essence," Onorato said of the \$56,371 legal bill, "the fee was being spent in the defense of children."

Update

BACKGROUND: Abby Conley, an aide with the Erie County Office of Children and Youth, or OCY, resigned under pressure Sept 10. Conley claims the county wrongfully forced her out because she had tried to expose wrongdoing at OCY. Erie County Executive Rick Schenker's administration claims Conley was asked to resign because she violated OCY confidentiality rules.

THE LATEST: The Schenker administration paid the Erie law firm of MacDonald, Illig, Jones & Britton \$56,371 to defend the county against a Civil Service appeal Conley filed to try to get her job back. Conley withdrew the appeal the day before the Civil Service Commission was to hear it in November.

COMING UP: The labor union for OCY, Local 2666 of the American Federation of State, County and Municipal Employees, is pursuing a grievance against the county over Conley's ouster. In addition, County Councilman Fiore Leone said he is preparing to move ahead with his investigation into OCY, which he has said will include an examination of Conley's ouster.

County has paid firm \$334,000

The Erie law firm of MacDonald, Illig, Jones & Britton's representation in the Abby Conley case is but one part of the work it has done for Erie County government since County Executive Rick Schenker took office in January 2002.

Including the \$56,000 bill in the Conley case, the county had paid MacDonald, Illig \$334,255 through the end of December, according to county finance records. Of that amount, \$182,450 was payment for the work the firm has done negotiating county government's eight labor contracts.

The rest of the work ranges from environmental-law concerns to individual labor issues, such as Conley's contested ouster from the Erie County Office of Children and Youth, said John Onorato, the solicitor for the Schenker administration.

Onorato is on a \$31,000 retainer, his four assistant solicitors get retainers of \$25,000 each. Onorato said the Schenker administration has turned to the MacDonald, Illig firm because of its expertise. He called hiring the firm for certain issues "a cost of doing business" and in the best interest of Erie County government, which has an annual budget of \$240 million and 1,300 employees.

"MacDonald, Illig has provided representation for the county in matters where the county Solicitor's Office has not been able to provide support," Onorato said. "You have to use a little bit of perspective here. We negotiate eight labor contracts and we need a labor attorney."

The MacDonald, Illig firm has done work for the county in the past, including for the administration of County Executive Judy Lynch, a Democrat, who

preceded Schenker, a Republican. The firm has political ties to the Schenker administration: John Mizner, a partner in the firm, is chairman of the Erie County Republican Party and was one of Schenker's biggest supporters during the 2001 campaign for county executive.

Mizner was out of the office and unavailable for comment. Onorato cited MacDonald, Illig's previous work for the county and said the firm long has been a legal resource for county government, no matter what the politics of the administration.

The Lynch administration used MacDonald, Illig for individual labor issues, but Lynch's staff negotiated the county's labor contracts on its own. That changed in early 2002, when Schenker hired the firm to handle labor contracts. County Council urged the move, citing intricacies of the labor contracts that made hiring outside counsel necessary.

The firm's lead labor lawyer on the contracts, Roger Taft, also handled the Conley case.

"I represented the Lynch administration on several matters," Taft said of his experience in county government. "I have always felt that when someone asked for my services, it was because of my expertise, not because I was 'connected' with any political party or administration. That is not the way I do things."

ED PALATELLA, can be reached at 870-1813 or by e-mail.

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